

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, June 11, 2018, 6:00 PM

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Jeff Willis, Vice President; Bill Byers, Bob Johnson, and Amanda Mosiman.

Also present were Morrie Doll, Attorney, Molly Barnhill, Assistant Director, and Kim Kaiser staff.

**MINUTES:** Upon a motion by Bob Johnson and seconded by Bill Byers the Minutes from the regular meeting held May 14, 2018 were approved as circulated.

The Vice-President explained the Rules and Procedures

### **REZONING PETITIONS:**

**PC-R-18-07 – Petition of Ken Faver** to rezone 1.78 acres located on the E side of Coal Mine Rd. approximately 264' N of the intersection formed by Coal Mine Rd. & Oak Grove Rd. from "A" Agriculture to PUD consisting of "R-1" One Family Dwelling zoning district. With a Use and Development Commitment. Ohio Twp. *(Complete legal on file.) Continued from May 14, 2018.*

Bill Bivins stated the Drainage Board Engineers didn't get to review the plans until today and they had some questions so we continued it for two weeks so he requests that we continue the rezoning until the July meeting.

Amanda Mosiman made a motion to continue PC-R-18-07 to the July APC meeting. The motion was seconded by Bob Johnson and unanimously carried.

Bill Bivins stated that the PUD is also on the agenda for tonight and I would like to continue that too.

Vice-President Willis stated let's skip ahead to PP-18-04 and asked for a motion to continue it as well.

Amanda Mosiman made a motion to also continue PP-18-04 to the July 9<sup>th</sup> meeting. The motion was seconded by Bob Johnson and unanimously carried.

**PC-R-18-09– Petition of Stage One Holdings LLC by John Colbert, CEO** to rezone lot 80-C in Triple Crown Estates, Replats Lots 80 & 81 located on the N side of Ruffian Lane approximately 0' NW of the intersection formed by Ruffian Lane and Citation Drive from a “C-1” Neighborhood Commercial Zoning District to “C-2” Community Commercial District with a Use and Development Commitment, Ohio Twp. 8666 *Ruffian Lane*. *Advertised in the Standard May 31, 2018.*

John Colbert and his wife were present.

The Vice-President called for a staff report.

Mrs. Barnhill stated we do have all of the return receipts except for one from Theresa and Liz Zlock, it was delivered unclaimed and is being returned to the sender. She said it was mailed to the correct address on file and within the 21-day mailing deadline. She stated there is no minimum lot size for a C-2 zoning and the area is projected to be commercial use. She said it is a vacant commercial building now. She stated the surrounding zoning and land use across SR 66 is “C-4” with business to the east and west is “C-1” with businesses. She added to the south is “R-3” with residences. She stated they have submitted a use and development commitment limiting the “C-2” uses to a wine bar/restaurant only and any of the uses allowed in a “C-1”. She said part of the property has an A flood plain however they have a LOMA on the building itself. She stated their access is off Ruffian Ln. She said the stated use is a wine bar, which will be in compliance.

Mrs. Barnhill stated this property is where the old Ziedler’s Flowers used to be. She said in 2015 the previous owner Bel Air Land LLC tried to rezone this property to “C-3” for a car lot. There were several remonstrators that did not want a car lot to go in this location and it was denied. She said the property was then rented and used as a restaurant for a while it has since then sold to Mr. Colbert who had the understanding it was okay to sell alcohol at this location. She stated Mr. Colbert obtained his liquor license and came into the office for a new sign permit. She said that is when he was informed that they could not sell alcohol in the “C-1” zoning district. She added we have received two letters from adjacent property owners in favor of this petition and the petition is in order.

The Vice-President called for questions from the Board.

Vice-President Willis asked how a wine bar is different from a regular bar.

Mr. Colbert replied our liquor license is a two way. He said we will not have hard liquor to serve we will serve wines. He stated we are working with a wine distributor out of Indianapolis and we intend on having 300-400 bottles from various regions in the world. He said we are also working with some local Indiana... He stated a wine bar would not typically have a full service restaurant; we plan to have shareable flat breads, dips, and desserts that we are working with a

vendor. He said that is kind of how we are different, we envision it as a place to come and gather with friends. He said our hours would be limited from 3:00 to 9:00 p.m. Tuesday through Thursday and from 3:00 to 10:00 or 10:30 on the weekends.

Amanda Mosiman asked if he meant Friday, Saturday, and Sunday or just Friday and Saturday.

Mr. Colbert replied only Friday and Saturday, they will be closed on Sunday and Monday. He added they also plan to have entertainment: jazz trios, spoken word poetry so something a little unique for the area not your typically honky tonk. He said just a higher end, it is not seen in this area there is one in Owensboro, we have been to a couple in Louisville and as he has travelled, he has been to some.

Vice-President Willis asked if any of the music would be outside.

Mr. Colbert replied no, the music would be inside they had built a little to show ...we have pictures if you would like to see kind of what it looks like.

Mr. Colbert was informed whatever he gives to the Board would stay with the Board.

Mr. Colbert said they have a little corner that is for entertainment that is inside and with the thought of the neighborhood behind us, we have positioned the stage facing towards the Lloyd Expressway so any sound will be heading that way. He said they would have some seating outside but mostly for people if they want to go out to smoke a cigarette or ...

Bob Johnson asked how much seating they would have.

Mrs. Colbert replied it was less than 80 so it is more like what she likes to call a place for a mature group, because she doesn't like to be called old. She stated once you get to a certain age bars are just a little bit too loud and crazy for her. She said there is really nowhere for someone her age to go and have a nice glass of wine, sit and talk with friends, or just get together. She said maybe like do some painting type activities where you have an artist come in and everybody will come in and buy tickets and do like an art and have a glass of wine. She said so more like an art type of place where we will have music but like your jazz and blues nothing really loud or boisterous. She stated one of the concerns was parking on page 3 we illustrated where we have added some parking on the side because that was one of the biggest concerns of some of the neighbors that were behind us. She said they didn't want to cause them any stress or have anyone parking in front of their homes. She said we've added some parking and talked with our neighbors, State Farm, about using their lot in the evenings when they are closed so we would have even more parking.

Mr. Colbert stated for their employees to park there so it would free up spaces.

Amanda Mosiman asked if that was in the form of an official agreement or still just verbal.

Mr. Colbert stated not yet just a verbal.

Bill Byers asked if they would be parking in a utility easement.

Mrs. Colbert stated they didn't know where the easement is.

Mr. Colbert stated they would be parking on the concrete. He said what you see in the image but not all of the way out to the ditch where he has limited it because you have to have room for the cars to go around and he thought that might be a problem.

Bob Johnson stated they should check with Vectren.

Mrs. Colbert stated they know they had a problem before and they know the area up in the front was part of the easement so they didn't add that in with any of the extra parking.

Amanda Mosiman stated she thought that was an issue with a structure it wasn't to park it was a fact that there was a structure in the easement.

Mrs. Colbert stated they did not put anything in that area at all.

Bill Byers stated he just didn't want them to get a surprise.

Mrs. Colbert said someone had told them that the people before them had put something up there and then had to take it down so they didn't plan anything for that area.

Bill Byers asked so there will be no entertainment outdoors.

Mrs. Colbert replied no, actually one of the things they looked at the sound the music it is not going to be great big speakers it is going to be a smaller type. She stated it is not a big venue so it isn't like that type of music.

Mr. Colbert said he thinks that most bands would come in and not need anything other than a vocalist they might need a microphone but that is about it. He added the sound carries pretty well.

Amanda Mosiman asked the pictures in the back are they just conceptual design or is that onsite now.

Mr. Colbert replied they are all actual. He stated we got down the road quite a bit before they found out about the zoning.

Mrs. Colbert stated the furniture is all in there, the kitchen was already there, and yes, it is all in there. She said you can kind of see it is not really made to be what people would consider a bar it is more where people would come and gather with their friends.

Attorney Doll asked what the square footage of the building is.

Mr. Colbert replied that he believes it is 3,200 square feet total and that includes the kitchen. He stated he hadn't measured what the actual entertainment area is. He said they have seating for approximately 70 people.

Attorney Doll stated the minimum parking under subsection 2-article 22 subsection 27 would be one parking space for every 200 square feet of floor area for a drinking or eating establishment that would only be 16 cars and he counted 40 spaces, which is clearly more than the ordinance requires.

Mr. Colbert stated he would anticipate looking at 20-25 cars because a wine bar is not a high traffic and is not really jam-packed.

Mrs. Colbert said they want to do some pop up events where a chef would come in and do some wine pairings. She stated so some local chefs would come in and they would do the cooking and then they would pair it with wine in fact they have some people that they have talked to about renting it out for October for a medical facility in the area that wants to do events there. She added they are looking at doing those type of things also.

Amanda Mosiman asked them if they would be staying in their time frame and not make special events go later.

Mrs. Colbert replied no.

Bob Johnson asked if this was a seven-day a week operation.

Mr. Colbert replied no, Tuesday through Saturday. He said they have lived in Newburgh for 12 years, he is from Evansville and she is from Owensboro, they have also committed to working with the city. He said they have sponsored the Jazz and Wine Fest for their stage sponsor, they worked with Helen Zimmerman, and so they are definitely a part of this community.

Vice-President asked for remonstrators for or against this project.

Krisi Senger stated she lives at 4033 Citation Dr. that would be the second house on the street from the wine bar. She said to give you an idea if she started at the street at the edge of her property she is there in less than 100 steps. She said she doesn't even like the word of remonstrator right now; she has met the Colbert's and consider them friends at this point. She said she has talked to them often and they have been great trying to explain the process to her and what is going on. She stated she was one of the main people that was coming and complaining when the car lot was going on. She said she didn't even go around the neighborhood to collect signatures or get people for or against or anything that is not her goal here today. She stated what they are wanting to put there she has absolutely no problem with. She said if they follow the letter of what they say they want it sounds great, it sounds like a place she will do business. She stated her worry is if they open the zoning up what is going to be in place for the next person that opens it up and wine and liquor license or wine and beer is what it is, are they going to be able to open it up as a honky tonk in its place. She said she needs there to

be some verbiage in this rezoning that protects her and her house from in a years' time they sell it and the next person comes in and says this is a great place for a pool hall. She stated she also wants some verbiage saying that they cannot go in and ask for a three-way liquor license to be able to offer other beverages later. She said she doesn't want it to where the next owner can come in and say they are keeping this open until 3:00 a.m. and every day of the week. She said she has to worry about those things because they are great, their music set up is perfect, and she thinks it will work great for them and they will never hear anything and what they would hear they would not mind hearing honestly. She said she needs something in this rezoning that protects her from all of the what ifs if someone else comes and holds them to what they say they are going to do and the next person from coming in and changing it to something you wouldn't want two doors down from your house. She stated she is concerned about the parking, she knows that they meet the ordinance requirements of 16 spaces which is absolutely crazy and needs to be looked at to only allow a 3200 square foot building that seats 80 people to only have to have 16 parking spaces. She said she questions that if they have room for 80 people, she thinks they will try to hold to it. She stated they said if someone parks in front of her house, she can call them and they will have them move their car but she doesn't know how feasible that is. She added she thinks they will try to live up to it but the next person probably won't. She said their group is a mature group but what about the next owners group. She said she just wants to make certain there is something in place to protect them in case someone that does not hold to their standards purchases the property in the future. She said she thinks that Warrick County as a whole needs to do a better job making sure people buying property is better informed on what they can put there. She said the real estate agents are not doing their job, this is the second person that has bought this property that had no clue what the zoning allowed. She said it would be nice in the future that there is something put in a packet of information that someone has to sign when they purchase property or sell property letting them know what is able to go there. She said we should protect them from putting money into a business and then finding out that they did not have the zoning. She stated they were able to go to the alcohol board and get the permit, she believes it is called, and the alcohol Board had no clue they didn't the right zoning either. She said they probably would not have been awarded that at the time if it were known.

Seth Zirkle, with Jackson Kelly a law firm in town, stated he isn't there to give information in favor or against but to give rebuttal information in support he has some information prepared. He said they have been assisting with this petition and has some information for the Commissioners (Board) it merely seems to help further illustrate the consistency of what is being requested with the commercial uses on and along Ruffian. He said the information that is before the Commissioners (Board) consideration is really just two parts to help distil this. He said the first page is just a screen capture of the Warrick County Land Use Development Thoroughfare Plan and you will see a small little circle there that depicts the area in question and that is under the County's Comprehensive Plan along what he would call a commercial thoroughfare. He said he would also note under Comprehensive Plan and the goals within it what is being requested here is consistent with the County's Comprehensive Plan going back to 2007 sought to do and that is a use that is not out of character with the neighboring properties. He said John has mentioned he has good faith although unofficial discussion with the abutting owner regarding sharing parking and he can commit to the Commissioners (Board) that they will continue those discussions. He said more than likely if and to the extent an agreement is reached John and Chya

remain willing to enter into a shared parking agreement if necessary to moralize the terms of that. He said with respect to increase traffic flow or concerns the residential areas to the south might have his sense is that any traffic flow is going to be inconsequential compared to that which is generated from the immensely successful and wonderful establishment up the street Nelly's. He stated if you drive by there on weekday or weekend morning it is wonderful to see that place thriving. He said in closing to the extent the Commissioners (Board) are persuaded that additional restrictions or as to the hours of operation moving forward beyond his client's ownership of this property to address the residents' concerns it might be well within consideration to impose an hour restriction. He said he does know, in some incidences these restriction are recorded land records similar to any other use restrictions coming upon property such as irrespective of who owns that property 10-15 years from now, if and to the extent it is a wine bar, that operator/owner holds a permit he/she will still be bound by hours of operation that respect the concerns of the citizens who have spoken here this evening.

John Colbert stated they do have the use and development which limits it to a wine bar restaurant. He said his understanding is that is the only thing in a "C-2" use that can be put into that building anything else they do would have to be "C-1". He said that is his understanding but the Board would have to confirm that and if so it would answer one of the issues.

Attorney Doll stated the property is currently "C-1" and can be used for purpose that is permitted now in "C-1" in Warrick County secondly the only "C-2" use is as a wine bar, you are correct about that. He said there is nothing in the use and development commitment that talks about parking, talks about time of day of operation, or talks about day of week operation. He said you have made representations here tonight to the Board or Commission that it will only be open from x-y on certain days of the week and you are in negotiations with neighbors about parking. He said his question is why those other three items are not contained in your proposed use and development commitment.

John Colbert replied they filed that as soon as they found out that they had to file for the zoning, they hadn't thought that through.

Attorney Doll said is it your intention if the Board wants to conditionally approve this; wants to add hours of the day of operation, hours of the week of operation, and some contingency that you won't have less than 40 parking spots on site or something of that sort. He asked how Mr. Colbert felt.

Mrs. Colbert said she didn't have a problem with that and didn't think her husband did either because they don't intend on, she doesn't intend on being there late.

Attorney Doll stated that might change.

Mr. Colbert replied so the short answer is yes.

Attorney Doll asked what happens when someone wants to hold a function there and they want to go until 11 or midnight or one or whatever, that is where the question will come in.

Mr. Colbert stated he thinks the parking issue he doesn't see as a problem.

Attorney Doll stated no, they have already exceeded the number required by the ordinance.

Mr. Colbert said the hours yes they would...

Attorney Doll asked the hours would be from when to when on what days of the week.

Mrs. Colbert replied from 3-9 p.m. Tuesday, Wednesday, and Thursday and from 3-10 or 10:30 p.m. on Friday and Saturday.

Attorney Doll asked if everybody was hearing that.

Someone from the audience said she was hearing it but wants to get some ??? . She said are you sure, you are never going to have a party on Monday or Tuesday for private parties.

Mrs. Colbert replied the only thing she said was if someone wanted to have like a bridal shower or something like that on a Sunday she would be willing to come in and work that as long as it was after her church time.

Mr. Colbert said he didn't think anyone has an issue with us being open seven days a week but we could put hour restrictions on.

Attorney Doll said you have hour limitations on when you can serve alcohol also.

Mr. Colbert replied yes, they would exceed what they are planning.

Attorney Doll said it depends on what the Boards wishes are or whether they care or not but that is an issue that has been raised by the remonstrator. He said you are going to close no later than 9:00 p.m. on weekdays.

Mrs. Colbert replied not Fridays.

Attorney Doll asked Sunday, Monday, Tuesday, Wednesday, and Thursday what is the latest you will be open.

Mrs. Colbert replied Sunday unless it is something during the day they wouldn't be but at the latest, it would be 9:00 p.m.

Attorney Doll asked and on Friday and Saturday what is the latest you wish to stay open.

Mr. Colbert replied 10:30 p.m.

Attorney Doll asked if they were sure.



Mr. Colbert replied yes.

Attorney Doll stated if we put it in here and approve it this way, you are bound by that.

Bob Johnson said why don't we just make it until 11:00 p.m. just in case.

Mr. & Mrs. Colbert replied that is fine.

Attorney Doll said all right. He said you are never going to have less than 40 parking spots. He said you are going to have outdoor seating but no outside performance of entertainment. He asked are you willing to commit to that.

Mrs. Colbert replied yes.

Attorney Doll asked if there were any other concerns the Board has that they need to talk about as to the use and development.

Bill Byers replied he thinks the hours and days of operation make it much more digestible for the neighbors and everyone concerned.

Attorney Doll stated it is seven days a week potentially they don't intend to but because such as a wedding shower in the afternoon might occur on Sunday we haven't limited them to just...

Bill Byers said yes that was discussed earlier.

Attorney Doll said yes, he just wanted to make it clear what they will be voting upon tonight.

Bob Johnson said counselor are you proposing that Mr. Colbert goes in and refiles.

Attorney Doll replied no, what he understands Mr. Colbert to agree to is a conditional approval, if you will a modification, of the use and development as part of your consideration tonight so that any motion to approve this, in addition to approving the use and development as submitted, but also contain language that says it will not be operated later than 11:00 p.m. on Friday and Saturday, otherwise until 9:00 p.m. on the other days, there will be no outside entertainment performed, and parking will not be less than 40 spaces. He said there needs to be motions and seconds.

Bob Johnson made a motion contingent on the modifications as stated by counsel to approve PC-R-18-09. The motion was seconded by Amanda Mosiman and unanimously carried.

Attorney Doll stated this is a recommendation to the Commissioner's and will be considered on their meeting on Monday, July 9, 2018 at 4:00 p.m. for final passage.

**PC-R-18-10 – Petition of BBCF Properties, LLC by William Felts, Mbr.** to rezone 3.02 acres located on the S side of Sharon Rd. approximately 100' E of the intersection formed by SR 66

and Sharon Rd. from an “A” Agricultural to “C-4” General Commercial Zoning District, Ohio Twp. *Complete legal on file. Advertised in the Standard May 31, 2018.*

Scott Buedel, Cash Waggoner & Associates and William & Anita Felts were present.

Attorney Doll stated the first matter we have is we have received an appearance of counsel and a motion filed by Anthony Long on the behalf of his client's, Jeffrey & Holly Hobgood. He said the motion was filed on June 7, Anthony why don't you explain to the Board/Commission what your motion is please.

Anthony Long stated that he and his associate, Anna Below, represent Jeffrey & Holly Hobgood. He said they contacted him on June 6 and wanted his office to represent them in a remonstrance for this project. He said with the help of your staff we were able to get a copy of application probably the same day. He said we obviously don't have the time to study the things that he thinks needs to be studied. He stated he has been out to look at the property. He said the application, which he thinks, tells us very little says they want to put in a gas station/convenience store. He said they are so concerned because that is so broad on a “C-4” application when he doesn't think it needs anything but a “C-1” but in the event there is something hidden that they need to know about. He stated he is particularly concerned about traffic patterns, accident rates, access that we need to consult with some experts. He said this property has a huge; he calls it a gorge, down through the middle of it. He said they had no data, nothing what so ever to tell them what manner, means, or mode of operation that these people have, what hours of operation, what the lighting configuration, where the building placements are going to be, whether or not they intend to have access in and out at Sharon Rd., or if it will all be on SR 66. He stated if SR 66 is involved, there is one entrance there presently. He said there are tons of things that need to go on, as you just heard in the previous case neighbors are genuinely concerned. He added there are a number of people here tonight that share these concerns with the Hobgood's and I've advised them to speak with their neighbors and to help them organize themselves into a unit where they can come forward and make an objective presentation to answer the questions. He said right now we have nothing but questions we have no answers, nothing but speculation as to what is going to go in there. He said they are concerned that there is a sign on the property that it is sold, if that is truthful and it has been sold, and then the applicant no longer owns it. He thinks by law that the application would be insufficient, now it may well be pending but the sign, as he understands it from his clients, indicates that it says sold. He said he would tell you that we believe that the difference from a lot of state highway sections is this one has a lot of residential adjacent to this piece of property. He said there is a gas station on one of the corners but the way the highway turns and runs north and south, basically they are asking that they are given an opportunity to find out more about this project and that everyone would want to know more about it. He said this is going to be a really devastating situation to the residents in the area. He said there a number of people here but the issue before us now is for a continuance. He said they are asking for sixty days, we hope to be able to do an accident investigation at the intersection. He said they would like to have some consultation with some professional traffic planners to have them take a look at this at least that would be his plan as he has discussed with his clients. He said they are still in the process of allowing them to do that. He stated he thinks this was

filed on May 14, less than a month ago. He said they were served with a certified mail on the 17<sup>th</sup> and it is honestly not enough time to prepare.

Attorney Doll asked Anthony if the Hobgood's live immediately to the east down Sharon Rd. from the property.

Anthony Long replied yes, it adjoins it.

Bob Johnson stated it would seem, Mr. Vice-President that the order of business is to see what the petitioner's response is to the motion to continue.

Scott Buedel, with Cash Waggoner and Associates, said he is there with the owners, Bill & Anita Felts, and the realtor of the property Sherry Hancock. He said they filed this as with any other rezoning, we have met all of the deadlines, and we sent certified mail as required on time. He said we thought there was sufficient time once they even received the notice; they received the notice back on May 17 as far as when it was signed for on the green receipt. He said from the stand point of May 17 to June 6 before they had Anthony on board. He said we feel that there was a lot of time wasted that was not necessary. He said from the standpoint of what we did filing for the rezoning everything was done properly and notifications were on time. He said from some of the comments as far as the motion to continue this we feel like everyone has had adequate time to look at this, adequate time to analyze it, and the reasoning for us to be delayed a month we don't feel are appropriate. He said there is a purchase agreement in place for the property. He stated it is pending, there is a buyer for the property and they have a certain amount of days to get all of the rezoning in place for them to acquire the property. He said the sold sign that is on the for sale sign were put up because of the purchase agreement that is in place, it is not sold. He said the property is still owned by BBCF Properties until such time that it closes, so the property has not been transferred by any means and it won't be transferred as an "A" zoned property. He said where the property is located he is sure that is the reason Sherry Hancock has represented the Felt's from day one to try to sell this property. He said this property has been on the market on and off for the past thirteen years. He said it is always one of those things that if you want to control that corner, take care of it, and keep it open forever there has been ample time to purchase the property when it was for sale. He said looking at the intersection of SR 66 and Sharon Rd. there is a gas station on the west side of the road, there is commercial property to the north and to the east, it is the Hobgood property that is zoned "A" and they are on board with doing some conceptual layouts. He said he has one that keeps a large buffer on the east side of the property to respect the adjacent property. He stated an exact dimension for how it is laid out today he cannot commit to. He said from seeing how large the property is he thinks you will agree that basically everything that is being proposed is from the middle of the property west. He said they want to have most of their access and visibility right along SR 66 and not infringe on what is considered the residential properties to the east of them. He said everything to the north and west is zoned commercial right now. He added they feel like if this fits into a commercial zoned location this by any means this property definitely fits that. He said it has been on the market it just as an "A" zoned property for thirteen years. He said he is sure the reason it has not been bought with a house constructed on it is that it is not considered a residential property it is set up for commercial with the highway.

Attorney Doll asked if you and your clients filed the application to rezone this to “C-4”.

Scott Buedel replied yes.

Attorney Doll stated that is unusual. He stated it is from “A” but it skips “C-1”, “C-2”, “C-3” and goes all of the way to “C-4”. He said it has been described that this is going to be a convenience store.

Scott Buedel replied correct.

Attorney Doll said a convenience store and fueling facilities that do not offer automotive repair or service is specifically authorized in a “C-1” district. He said the concern he has about acting quickly on your application tonight instead of over objections is you are really over zoning this property for the announced purpose and that cause him to question why that has happened. He asked if he could elaborate about as part of the response to your objection to the continuance.

Scott Buedel replied yes, the initial reason for going above and beyond the “C-1” was when he read through the zoning ordinance it was clearly stated convenience store/gas station without the automotive repair no question about it. He said he read further and for outside storage and those type of things, he called the Planning Commission to verify what that meant and what that entailed because a typical convenience store will have firewood in racks sitting out front and mulch sitting in the parking lot. He said he asked if that constituted outside storage and if that bumps you into a higher category for the standpoint of the zoning. He added they said yes even though the gas station right across the street is zoned “C-1” and you could go to google earth to look at street view and see that there is mulch, firewood, and so forth sitting out in front of them, in violation or not that was the direction they took. He said in addition to that the Felt’s wanted to make sure their interests were protected as much as they could by being able to sell the property and make sure that was a marketable piece of property. He said the buyer of the property has in his mind, of what was in the purchase agreement, and was this was to be a “C-4” zoned property. He said everybody was along the lines of a “C-4” zoning and pushing for the “C-4” zoning and when we found out that outside storage of mulch, firewood, and other types of things that normally are outside a convenience store don’t work in a “C-1” zoning so we then we jumped up to the higher zoning.

Attorney Doll said the higher zoning has many additional permitted areas and there is no use and development commitment with this rezoning as he sees it. He said you could have building materials, sales yards, contractor equipment sales and service, freight and truck yards, terminals, industrial equipment rentals, nursing homes, convalescent or custodial care centers, trade sales, trade schools, welding supplies, wholesale warehouse, storage supplies, and any lesser-zoned permitted uses. He said he does see where outside firewood sales ready for use is a specific itemized use in a “C-3” but he still doesn’t understand why it is being requested to go to a “C-4” for the announced use of a convenience store. He said he is curious about whether or not that is necessary; he understands the commitment in the sales agreement, but if that shouldn’t give the neighbors some additional time to investigate. He asked if they had met with the neighbors at all about this project.

Scott Buedel replied he had not. He said once they sent the notices out he hadn't really heard any comments or anything until Thursday evening when he received the e-mail from Anthony's office notifying them of his intention to continue.

Vice-President Willis asked if we continued it a month would, we be able to expedite it the two weeks for the Commissioner's meeting if it was approved tonight.

Attorney Doll replied you could suspend the rules to refer it.

Vice-President Willis said that way we would only be setting them back two weeks instead of a month.

Attorney Doll replied that is correct, if it were approved tonight, it wouldn't be considered by the Commissioner's for the rezone until the July meeting. He said if it is approved in July, it is conceivable that we suspended the rules as part of the motion. He said he is not prejudging that it will be approved.

Vice-President said approved or denied because this is only a recommendation, correct.

Attorney Doll replied correct. He said if you suspended the rules it could be considered at their second meeting in July you would save two weeks roughly.

Vice-President Willis stated or only loose two weeks depending on which way you look at it.

Attorney Doll stated under rule 3.A under our rules of procedure it is the applicant that has the authority to request a continuance but he thinks it is in the discretion of the Board to decide if on its own it wants to continue this to the July meeting or not.

Amanda Mosiman stated that she didn't think the request was unreasonable so she moves that PC-R-18-10 be moved to our July 9 agenda.

Bill Byers seconded the motion.

Attorney Doll added because we only have four members in attendance tonight the motion to pass would have to be unanimous. He added anything less than that and the motion to continue it to the July meeting will fail.

Bob Johnson said he is agreement with you counselor "C-4" scares me a little bit because there are so many homes in that area and to put this at "C-4" you are opening up the door to truck stops or anything.

Attorney Doll stated they might be able to answer all of those in their presentation as to why that is an appropriate rezone. He said the question just gets to be because it is not just a "C-1" do you want to allow additional time for the parties to explore this to see if it is appropriate or not. He said I am not trying to prejudge.

Bob Johnson stated he understood and he is giving advice he is just concerned and voicing his concern. He said he sees a lot of remonstrators out there, homeowners probably, and it concerns him.

Scott Buedel said they are not necessarily opposed to the “C-1” the reasoning we asked for a higher zoning because of those isolated things that can happen on a convenience store property. He said his question was if it is called a convenience store is it anticipated that those type of things will happen and that is convenient store activity or is that considered outside storage that they can’t do that.

Attorney Doll said his recollection was we have never had that issue raised in Warrick County in the last ten years where someone has objected and said you cannot sell propane gas tanks or firewood or mulch outside of a convenience store. He stated the ready to use firewood requirement, his recollection was we amended that recently to add that to a “C-3” because there are parties out here with giant mounds of cut firewood for sale. He said he was thinking of SR 261 adjacent to the turn into the Schnuck’s road Bell Oaks Dr. He added that was pretty much on the edge of the pavement. He said consequently, there was some zoning concerns about that. He stated he doesn’t think that was directed, maybe we did a poor job of describing it in the zoning ordinance and need to revisit that, it was the parcels where people were selling firewood unrelated to a convenience store that we were trying to control. He stated you are in the middle of a vote; there was a motion and a second.

Amanda Mosiman said the motion was to move this petition to the July meeting. She added if you don’t want to do that you need to vote the motion down but that is her motion.

Vice-President Willis said there is a motion and a second all of those in favor... Amanda Mosiman and Jeff Willis voted to continue and Bill Byers and Bob Johnson voted to hear it this meeting.

Attorney Doll stated it is not being continued to July. He stated the request for a continuance was turned down, denied. He said the applicant would proceed with their presentation.

Scott Buedel said from where we left off before, we are at the southeast corner of Sharon Rd. and SR 66. He said he has spoken with the potential buyer of the property and they have worked on a couple of preliminary layouts. (He hands out copies to the Board members) He said there are two access points on the property currently, one is down by the southwest corner of the property on SR 66 and there is one on Sharon Rd. towards the northeast corner of the property. He said they are working to get the drives turned in and permitted for the potential buyer, he wants to make sure that he will get the drive cuts. He stated the drive onto SR 66 would be a right in and a right out only, whenever you are coming north on SR 66 you can turn in and then head back out going north on SR 66 or you can go to Sharon Rd. and get back on at the light to head south on SR 66. He said they would like to move the entrance on SR 66 as far west as they possibly can but realizes where the location of the drive is located now was probably put there for the reason to keep it as distant as it could from SR 66 and keep that intersection less congested and

have plenty of turning ability in and out. He said the potential buyer is looking to have five gas pumps and two diesel pumps; those are the separated areas with the canopy over the top of them. He said he wants that pushed out as far west to SR 66 as he can possibly get it for the most visibility of the property. He said the building itself would be somewhat of a shield for the lighting of the canopy's to the neighboring property and as shown they have two rows of pine trees 20' apart staggered spacing to add more of a buffer with the east adjoining property. He said where he shows the building is over 100' off the property line and the only thing that would extend closer to the property line is the drive in the northeast corner. He said it they can work with Warrick County to get that moved, but as you can see on the aerial photo there is a large white box that is a large AT & T facility approximately 200' from SR 66. He said we would have to go all of the way to the other side of it but it would work out better for our site and keep the drive further away from the east property adjoiner. He said what they are proposing it is over 100' off of the property line and to make a commitment to how close a building or another structure could be until he knows that the turning movements will work for semis and so forth and we didn't have to shift it a little more one way or the other. He said he would hate to commit to that and limit him to half of his property and it wouldn't work but he wouldn't mind saying the east 50' of the property will be a buffer for sure. He said that is what they are proposing with the trees that are showing there now. He said as stated before there is a gas station on the west side of SR 66 that is been there for years, the northwest corner of the intersection and the north side of Sharon Rd. are zoned "C-3" right now and down to the south there is also some property that is zoned "C-3". He added as far as the adjoining landowners having the "A" zoning the Hobgood's are their immediate adjoiner and their concern to be able to offer that buffer between what is being proposed with the gas station. He said they hope the building itself and the canopy's being pushed out as far as they can west towards SR 66 for visibility purposes would be agreeable to the neighboring properties and those going up and down Sharon Rd. He stated just reiterate this property is zoned "A" and has been for a long time. He said Sherry Hancock has represented the Felt's and tried to sell this property for the past 13 years. He said it is definitely not an "A" piece of property necessarily. He said it isn't going to be with Newburgh's market the way it is, how popular it is, that people want to be here and for it to sit there for 13 years a 3 acre piece of property and not be acquired for residential purposes it adds to the fact that it is a commercial piece of property. He stated this is what they are asking for; there was a comment in the notice from Anthony asking about hours of operation. He stated it is a convenience store, he doesn't know his absolute business plan but his assumption is that it would be 24 hours.

Vice-President Willis asked for questions from the Board.

Amanda Mosiman asked them to reconsider pines because pines are not suitable. She said they have seen pines decline she has been diagnosing it for three years. She said they just don't do well in these soil types, in the climate changes, and they don't do well in an urban environment so consider something else besides a pine.

Scott Buedel replied that would be fine. He said they have actually done this a couple of times putting more of a cedar selection it is actually a thicker canopy itself anyway. He said they are willing to do what it takes that there is a good buffer with the adjacent property. He stated as

you can see on the exhibit that they are not trying to crowd the residential properties, they aren't trying to be on their doorstep, and they are trying to stay as close to SR 66 as they possibly can for both parties' sakes and to leave a large buffer between the improvements that will be on this site and the adjoining property. He said to commit to a certain width on what the buffer needs to be, he thinks he is ok with a certain width to put a number to it but he doesn't know if it would be better to put a number to it or put a feature to it whether it is a row or two of pine trees or cedars or whatever that may be. He stated he didn't know if that was more suitable than just putting an absolute number on something that this strip will be maintained as a buffer but there could be a combination of both.

The Vice-President asked for remonstrators for or against the project.

William Felts stated that one of the things Attorney Long said about the sign saying sold. He said he wasn't aware of that and as soon as he found out it has been changed to pending. He added the other thing is they are zoned "A" the tenant that is remonstrating, Jeffrey & Holly Hobgood, have the property abutting them and they have they are also zoned "A" and yet they are running a commercial business from their property. He stated they are trying to abide by the law and trying to do the proper zoning. He stated they have built 30+ houses or buildings in Warrick County and they want to do the right thing. He said Jim Felts was served by the Long Office and he doesn't exist on the property it is William Felts. He said he isn't trying to nitpick. He said they aren't property people and they are trying to do things right, trying to get the proper zoning, they don't want to put a pig farm there and they don't want to put a business there that isn't zoned properly.

Attorney Doll asked Mr. Felts if the "C-4" zoning that you have asked for, with your company BBCF, is that essential to your purchase agreement you have with your proposed buyer.

Mr. Felts replied no, he doesn't believe so. He said he mentioned to Scott that they would be willing to take a "C-1" whether the potential buyer takes the land or not. He said it seems like with the committee "C-4" is too broad for a convenience store. He stated they were not going to starve if you didn't change the zoning they have been there 10+ years they have a potential buyer now and would like to sell it and we like to do things the right way. He said "C-1" would not be a concern.

Attorney Doll asked the staff to bring the Comprehensive Zoning Ordinance on the computer.

Vice-President Willis stated (to the Board) your computers have the "C-4" requirements. He asked the staff if they could page up to the "C-1" requirements, since convenient stores can also sell beer, to see if that can be done in a "C-2" or if it can be done in a "C-1". He said they would want it cold he is sure.

Amanda Mosiman stated they would have to check.

Attorney Doll stated that would really be subject to the State liquor license.



Vice-President Willis said he didn't know if they could since they did the winery, they had to be a "C-2" to serve alcohol, and he didn't know if they had to be, "C-2" to sell it was in ours.

Mrs. Barnhill stated a package liquor store.

Attorney Doll stated that is different, that isn't a convenience store. He said that is a much more laborious use of the property. He said convenience stores permitted under a "C-1" subsection 7 and the ability to sell beer at a convenience store is controlled by Indiana Alcohol & Beverage Commission.

Vice-President Willis stated he wanted to make sure that if we recommended a "C-1" instead of a "C-4" and then they couldn't sell their product that one would assume is going to be at a convenience store.

Attorney Doll said "C-2" is taverns, bars, and nightclubs serving alcoholic beverages and he doesn't think that is what this request is. He said it seems to be "C-1" catches it.

Sherry Hancock said she is a realtor with ERA First Advantage Realty. She said she thinks if you look at that intersection, the highest and best use is definitely, what we are asking for the zoning for because you have the gas station right across the street. She said it has been there for a very long time. She said across from the gas station that is already there, on the north side of Sharon Rd. is almost a dump really. She said if you go across the highway right across from where their property is there was a shoe repair shop that was in total disrepair, it was in awful condition, and it was finally taken down. She said those are the four corners of that intersection. She said obviously the highest and best use of the property is what we are here trying to get the zoning for. She stated Hobgood's bought their home in 2002 this property went on the market starting in 2007, she is really embarrassed to tell us that, but she has had it on the market on and off from 2007 until 2018 with a huge sign that it is indeed for sale. She said she guess people are surprised that she did eventually sell it but that was the purpose of what they are trying to do. She said she interchangeably use the word sold with pending and has done that for 27 years. She said with the buyer it almost gives them peace of mind, they almost feel a personal connection to a property when it says sold rather than when it says pending because pending is less tangible. She stated it has not closed it is still in the name of the LLC that owns it but it is definitely pending. She said they have had the sign changed as of this afternoon so it says pending. She said her son is young attorney and he practices law in Indianapolis. She said she discussed this with him, he has a real estate license and he has asked her for a lot of advice so she called him and asked him for a little piece of advice. She said there is such a thing as latches. She said she had never heard of it, but it says that when a property has been on and off the market for a long period of time that there was an opportunity there for anyone to approach and purchase that piece of property because it was available for a long length of time. She said she thinks this might fall into that latches category, after which they have given up the right to purchase the property. She said she didn't know if that helps in your thinking or not. She said they are trying to go about this in the best way possible. She stated if you note behind Target and Fresh Market there is a wonderful residential area there. She added if you remember when they started to put the shopping center in the neighbors were very concerned about a buffer. She said

the kind of buffer that they are offering to you as well on this project. She stated it seems to have worked very well in Evansville; there is no reason why it would not work and protect your property as well.

Ascertaining there were no other remonstrators for the project the Vice-President asked for remonstrators against the project.

Anthony Long stated let him make an observation or two and he isn't a young lawyer from Indianapolis, but he has heard of latches. He said he thinks what that argument mean is that his clients could have went in and bought this property. He said that is her answer to saving what goes in next door to you. He added not everybody in this world could do that. He said he remembers when he bought his home it was part of a 20 acre tract and after he bought it he realized that he didn't want to control what goes in next door. He said the people that owned the property, the same people that sold him his, were good people they recognized that they had a captive person and he bought it. He stated that is how he controlled it and he was fortunate enough to be able to do that but not everybody in this world can do that. He stated for a realtor to come in here and say and argue that her young son lawyer in Indianapolis says this is latches and latches is when you are selling your rights and don't do anything. He said he thinks Mr. Doll will enlighten you on that subject. He said let him make another observation. He said you all represent the people of Warrick County. He stated it has always taken a conservative approach on zoning property, he thinks we have a good balance between the right to use your property for reasonable uses and the right not to use it in uses that are offensive to the planned area. He said he hasn't heard one issue today well first of all it is offensive to him as a citizen of this county that this Board has passed a set of rules that he has noticed it from the Zoning Appeals Board that people who are affected by your decisions have no standing to ask for anything. He said we can give it to you if we want to give it to you but you don't have any standing... he has heard Mr. Doll make a statement you are a remonstrator you don't have any right to ask for a continuance. He asked if that was something you are proud of in your rules the people, the homeowners here are affected they don't have any rights before you. He said that is embarrassing to him. He said he thinks most of you by and large are fine, honest, upstanding folks. He added some of you he even consider friends. He said let me tell you this property set there for 12 years or however many years not sold for a reason. He said if this were a hot development site, they would have snapped it up like that. He said Mr. Buedel gets up here and said we are concerned about these folks; these Hobgoods that live next door we are going to put some pine trees down the side. He stated if they were really concerned ... someone asked them have you been to talk to them. He asked have you talked to them about their concerns oh no we done that. He said they have been there longer apparently that the Felts' have. He said if they are the Felts that he knows he does business with Felts Lock and if that is the same people then they are good people. He said he has no quarrel with them at all. He said just keep my locks on my buildings working and we will be ok, don't take them out tomorrow. He said the fact is these folks are affected, one more point and then we get into the real gist. He said they have come before you, first you are saying planning commission staff has given legal advice that they had to have a higher zoning because they are going to sell firewood outside. He stated there is not a convenience store in this county that doesn't sell ice setting out on their front... that he has been to, there is not one, well maybe the one he uses there in Boonville doesn't sell firewood or

mulch, firewood galore up and down SR 66 they have firewood stacks we have to have "C-4". He said they have come in here to look you in the eye and say we just want "C-4" and Mr. Buedel says that is part of the sale commitment "C-4" zoning is a part of our deal. He said who is going to build this station, who is this phantom buyer, why aren't they in here making commitments. He asked can these people commit for them. He said he admires those folks from the wine shop, he doesn't like wine wouldn't drink it they offered it to him he might go in there for the camaraderie to see what us old people enjoy, but they have been in the neighborhood, they have talked to the people that is what people do. He said they have come in here in the blind why didn't they just come in and ask for an "M-2" they don't have any plan just put down convenience store. He said this is embarrassing to bring this before this Board tonight without us having the opportunity on this blindsided presentation from a phantom operator, an unknown operator, from a deal what is their success rate. He asked how good are these people, are they a bunch of teenagers that got together and bought this property that couldn't be sold if it has been on the market that long it must have been a pretty good buy. He asked do they have any information about the number of accidents at that intersection, has anybody told you or mentioned to you what the master plan calls for this intersection. He asked has anybody said that to you tonight, he hasn't heard that. He said he hasn't had the opportunity unfortunately; he was in the hospital last week and has been feeling poorly. He said he wanted to get up and look at the master plan to see what the development plan is for the people who developed the development plan for Warrick County. He stated you don't unless you know it or you have your staff do their work for them. He said he practices in his profession in a world where he presents the facts that help the people that make the decisions and he gives them to them. He said he used to do a lot of zoning work and to come in before the Board and ask for the highest possible commercial zoning when you need the lowest. He said it should be denied on principle because that is his opinion is tantamount to fraud. He said he is going to let the people, because he has not had the time to research the facts that he would want to know if he had to make this decision and recommend to the Board of Commissioners what to do with this property. He said to talk about accidents, to talk about traffic planning, to talk about things other than pine trees or cedar trees, you know you plant a bunch of cedar trees they will grow anywhere. He stated it takes a while for them to grow, are we going to plant them. He said if you go to the State you can get them about this tall (shows measurement with hands) and if he lived where the Hobgood's live he wouldn't have much hope that he would ever in his life time get much of a barrier between him and them. He asked what kind of barrier are they talking about. He said he has planted hundreds and hundreds of trees on his property over the years. He said 15 to 20 years of planting them and they aren't big they aren't all fast growing but his pines did pretty good out there maybe he was kinder to them but he has had to replace a few. He said cedars, he has some property, he would give them some big ones but they would have to come and get them. He stated the fact is if these folks wanted to develop, if they had a developing realtor, and they wanted to promote this property they would know they are adjoining a residential area, why didn't they go out there and do something ten years ago. He said you could buy these trees enough to plant that strip for \$200 or \$300 and plant them. He said in ten years and maybe replace them as they die out and they would have had a boundary. He asked who is committing to putting these trees in, Mr. Felts' is he going to go out there and put them in he doubts it. He said he is gone if he gets cash in the pocket, the phantom are they going to put them in, he doesn't know. He asked do you control that, are these people really prepared to go forward. He stated this is Holly Hobgood, she has a

handout for you that addresses theirs he would like for her to make their presentation and speaking on behalf of her husband, he is a wise man. He said then he is going to ask some of the other neighbors if they have a comment to at least stand up and identify themselves.

Holly Hobgood states her husband, Jeff, and her have lived there at 6899 Sharon Rd for about 15 years. She said that property has been for sale ever since they have lived there and it was for sale before that, and before the Felts' owned it and it has probably been for sale for about 30 years total. She said it was originally in two parcels because there was a home there when they moved there and that a woman and her son lived there. She said the woman had to go to a nursing home is what she understands and they sold the property to Mr. Felts. She stated in rebuttal to why we didn't purchase that property it was like one-time \$750,000 if you wanted to buy all of it. She said she is a nurse and her husband is retired from UPS, he does have a wood working business in their home but he doesn't have hours of operation, they don't have people coming in and out, parking or anything like that. She said to call it a commercial business she thinks is a big overstatement. She said it is just a home business that he does in his spare time. She stated they are concerned about the rezoning to "C-4" because that just opens up such a broad amount of things that could be there. She said it could be a concrete mixing facility, a tavern, and a grocery store, which wouldn't be terrible in her thoughts because it would be right next door, but why are they asking for so much zoning for a convenience store. She said that is a big red flag to them. She stated if it is a "C-4" and this convenience store is there then it changes hands in the future then it could be wide open to anything that could be in a "C-4" so that is a big concern. She said another concern is the traffic, the proposal they handed out just now has ingress/regress from that property on and off Sharon Rd. She said that would affect everyone in their neighborhood that goes up to that intersection. She said the road isn't very wide there, have they thought about how the planning might need to be to make the intersection wider. She said she would propose that there is no entrance or exit off Sharon Rd. that it should all just be from SR 66. She stated that would be beneficial to their entire neighborhood. She added if they would reconsider and zone this as a "C-1" for a convenience store like they say they want to put there. She said "C-4" is a big concern with them and all of their neighbors is the traffic because there is lots of accidents there. She said she was told by one of their neighbors whose wife had been in an accident at that very intersection 5 years ago. She said the accident rate for that intersection is very high for our county. She said he gave a number as if it is the fifth highest rate of accidents in the county. She said she doesn't know the statistical information on that but that is what he told her. She stated they have many concerns about the buffer between the two properties as they have already talked about. She said the realtor mentioned the Target shopping center in Evansville, it has more than just pine trees, and it has a berm a big-mounded piece of land there, a fence, and the trees. She asked if they would agree to something more along those lines that, which would be a lot more buffer than trees. She said another concern they have is there is no sewer on that property that they are aware of, they are on septic and their neighbors are on septic. She asked how is that going to impact the neighborhood as far as if they are going to bring sewer in there are we going to be required to hook up to sewer, what is the cost of that, that is another concern. She stated they don't know what their drainage plan is for that land; the land has a big gorge in the middle of it. She stated she doesn't want all of the water from that property draining onto theirs because theirs drains into a low point in their property that goes into a ravine and there is drainage that way. She asked are we going to have run off from that property all of the way through their yard

and into the ravine on the east side of their yard. She added we are concerned about the noise and the hours of operation. She asked if they would be open 24/7, with the lights, trash pick-up you will hear the dumpsters hitting the metal all of the time in the middle of the night possibly. She said just the traffic in general.

Someone asked if he is all right. Mr. Hobgood fell ill and the meeting recessed for 15 minutes.

Anthony Long wants the record to reflect what happened. He said one of the remonstrators, his client Mr. Hobgood, passed out and the emergency medical services were called. He stated they are taking him to the hospital and his wife is going with them. He said if we had citizens' rights before this Board, we would renew our motion for a continuance but since we don't we don't. He said he is here and you have to deal with it as you see fit.

Attorney Doll stated he thinks we were at the point with the remonstrators against the project.

Vice-President Willis replied correct.

Anthony Long stated that is why he is here. He said somebody said they wanted some questions...

Attorney Doll asked if there were any other remonstrators that want to speak. He said (to Anthony) he figured he wanted to speak last.

Anthony Long replied thank you.

Brian Pope, 6866 Sharon Rd, he said he has several concerns. He said one of which is the timing of this. He stated Mr. Buedel said Jeff & Holly would have had plenty of time to respond to this although he hasn't had time to figure out if a semi can turn around or not. He said he didn't know if that argument holds water. He said other concerns he has are light pollution and trash pollution. He said he is across the street from this property, not exactly adjacent to it. He said he and his wife have four young boys, nine, seven, four, & three. He stated they are out in the yard all of the time and he is worried about increased traffic at all hours of the night if that sort of operation... and he wonders a little bit about why does this have to be "C-4" if it is a convenience station. He said that is the real sticking point with him, he doesn't understand that. He said "C-4" could be many different things that are not gas stations. He stated if he were to voice his main concern to all of us it is why "C-4", why does it have to be "C-4" if they have said this is going to be a convenience store.

Bob Johnson asked if it were a "C-1" or "C-2" convenience store would you have a problem with that.

Brian Pope replied personally yes, he worries about property value destruction. He said he knows Ms. Hancock talked about what was best for that property but there are also other properties that come into play here. He said he thinks the commission needs to consider those.

Scott McLeod stated he lives off Sharon Rd. on the backside at 6799 Cedar Lake. He said he has worked for Pepsi for 38 years and has probably delivered to at least 1,000, if not more, grocery stores and convenience stores so he has good knowledge with a Class A CDL of trying to get into a convenience store. He said he is more concerned about the safety issues that come in. He stated he wouldn't have known about this is Holly hadn't brought this to his attention. He said he is concerned with "C-4". He said we talked earlier about serving wine and hours and this is a whole lot more volatile because it is a safety issue. He stated that intersection is very dangerous, we have recently about three years ago from Washington State and he has never seen so many cars run yellow lights and go through on red. He said especially with semis. He said that intersection, we keep talking about the Marathon on the other side of the road, if any of you have ever experienced that in the morning between school buses and the people trying to take a right because they are heading towards Alcoa then they have to take a left to get into the gas station. He said then all of the cars are coming out of Sharon Rd. so what you get is this congestion. He stated then throw a Pepsi semi in there all of a sudden and now it is trying to get in there, into a parking lot that is not very big. He said if you look at this drawing they have on here on where they want to put driveway onto Sharon Rd., you can barely get a left turn and get through there before the light changed because it is more traffic whichever way goes to Alcoa on the Lloyd. He said when you take that left there now you have a two lane road that is very narrow and is backed up with a lot of cars and school buses and try to take a right in there. He said the Marathon at least when you take a right turn with a semi you have the lane and then a left to get into the gas station. He stated to get into that unless you go all of the way down the Lloyd turn around and come back to get into that gas station. He said the way they have shown in those drawings, if you try to take a left onto Sharon and then a right with a semi there is no way in heck you can't go over into the other lane and you will block the whole road. He said he has quite a bit of experience with that and he can tell you that it is very difficult. He added we were talking about the wine and the levels that was and a "C-4" is pretty broad based. He stated the "C-1" he gets it and understands there is firewood at every gas station that is around here it seems like and doesn't seem to be a problem in a "C-1". He said the buffering he is concerned about it and he is farther away than most people are. He stated but there again he knows how loud everything is going behind there because he has been in them with semis and had people from behind yelling hey shut your motor off don't leave it running it's the middle of the night. He said it is cold out and you have a semi running and it is there for a long period while you are delivering. He said he has been on both sides of it so what he would ask the Board to look at is before making a decision; let's look at the safety part of this, let's look at how many accidents really are happening, how congested is that intersection, is there another way on the driveways the way they are to be in there and still allow the business to be there, and definitely not a "C-4" by any means because that opens it up to anything. He said it could be a convenience store now and it fails in three years then it is torn down and they have a "C-4" all right we can put a diesel operation in here and everything else. He added we could put this big strip mall in here and do whatever we want because we have a "C-4". He said that is what he would ask the Board to look at how it affects the neighborhood behind us and the traffic because there are a lot of kids and a lot of runners. He said there are no sidewalks there and it is a very narrow road. He stated it is prime for business on that road and he hates to say that but it is. He stated the way it is set up right now there is no way it should fly that way.

Jack Burgdorf stated there are several of them back there that live in the Ridgewood Subdivision, which is just off Sharon Rd. He said most of them have lived there maybe 30 or more so it is a mature subdivision. He said he thinks they all have concerns about the issues Scott mentioned that he has thought of. He stated Sharon Rd. is a really, really busy road already. He said he is a runner and he has run that road for a long time, 30 years ago. He added when they first built there you could run down the street safely but now he tries not to go in that direction very often. He said the combination of school buses and just general traffic has just worsened over the years. He stated one thing they had talked about back there but no one has brought up in the winter time going down towards the Lloyd Expressway on Sharon Rd. becomes a nightmare when it is icy at all. He said you have to start stopping way back because it is an incline going right into the Lloyd and if you aren't ready for it, you will slide right out into the highway. He said the combination of that problem and having a semi or tanker truck trying to come into that convenience store and exiting onto Sharon Rd., they cannot see how it can be done. He said on the right side as you are going on Sharon towards the Lloyd is a property that was once sold to be developed for a convenience store. He stated they started doing landfill and there wasn't sufficient material that could be built up and that project was ended because they couldn't build it up and make it safe. He said all of those things make it unsafe no matter how you zone it but it seems to him that the realty and the owner have the cart before the horse in trying to have it rezoned into something that they aren't quite sure what is going to be built. He said they are going to build it not sure, how the highway commission the state highway people would be able to do it off the Lloyd or off Sharon Rd. He said he thinks the commission needs to look at all of these things before you can proceed very far.

Bonnie McLeod stated she lives at 6799 Cedar Ln. kind of behind Hobgood's. She said she pleads with the Board to give them some more time regarding the traffic. She said that is her biggest concern. She stated it is bad already; it is a very narrow road. She said she doesn't see how you can go forward without giving us some more time to look at that. She said that is her biggest concern; please give them some more time.

Anthony Long said those of you who came up here tonight to express your concern and disagreement with the proceedings of having this thing advance will you please stand up so the Board can see how many are concerned with the neighborhood and the area. He said there is no reason why this matter cannot be worked out. He stated you heard his client's, and at the time, he does not represent these folks, but he is sure standing here with them. He said he knows Holly and Jeff would like to be here with them. He said if they could get with someone to say this is what you need. He stated what these folks are asking you to do tonight is approve this at whatever level with a phantom that isn't making any commitments before you. He said he will put cedars in, and he will put redwoods in. He stated he is not going to put them in the phantom is. He said then somebody comes you didn't do that and he says he didn't promise anything, he didn't appear before you all, you didn't even know who he was. He said he asked them how many times you all voted to recommend approval for anything in the blind without somebody who is going to do the job, who is going to pour the wine, is not going to have the music outside has come in and made those commitments to you. He said for years and years we zoned property based on peoples words and now we do not even need that just send in somebody that does not even tell you whose word they are speaking for. He said he doesn't know if they are

ashamed of them or if there is some sort of NDA, non-disclosure agreement that is involved today that keeps us from knowing who these folks are. He added for a reasonable developer to come in on a "C-1" zoning with proper commitment for buffering and traffic containment and traffic control, and turning radius' for semi-trailers and tractors to come in and go which road and what on. He said what are the County's regulations is it doable with the ground they have with the topography. He stated these are all questions he would love to sit down with the folks that say they care so much about their neighbors. He said let's talk to the County Engineer, is this turning radius with you going to get permit from the county to make a turn here off Sharon Rd. He asked is there a distance, can that be done without hazard to the roadway, do we need acceleration/deceleration lanes, is there right of way available for that. He said on the state highway side the same things, for some reason the state of Indiana has restricted the use of 66 there, the directional medians in that part of the highway. He said you can't come out and turn across the lane of traffic you have to turn out so that if you come out and go whatever the heck way it is, you can come out on 66 towards something, you have to go all of the way up to Sharon and then turn and do a 180 and come back. He said as his GPS likes to tell him many times but he doesn't always follow its instruction very well sometimes, and do a U-turn. He stated if you are in a semi that is a tough deal particularly if you cannot get out safely on Sharon Rd. He stated you have school buses; Sharon School is down there, people this should not be before you tonight. He said his folks, you have heard my client's say we might be able to live with a "C-1" if we could have some input into it. He added that is where we are. He said he trusts this matter to your sound guidance and wisdom and thank you for allowing us to speak.

Scott Buedel said listening to everybody's arguments; they definitely have some valid points. He said many of the things they are asking for they are next in the process as far as turning radius' and so forth, and drive isle widths those definitely come before Warrick County again. He said they aren't going to make up a plan that doesn't work where the semis can't turn and so forth. He said what he has drawn up he believes is close to what it needs to be but that will be at sight review he will get with Bobby Howard about acceleration/deceleration lanes that are all required to approve the sight plan itself. He said drainage would definitely will be looked at. He said they are not going to affect anybody's adjacent property with run off any more than it is already happening today. He said they would retain any storm water that is coming off that property to the standards or above of what Warrick County is going to require. He said all of those things that are being brought up and he doesn't know of anybody who has come in and paid for full-blown topo and site design and spent all of that money and then try to go through and get a rezoning. He said it is easy to nit-pick on those points, he understands that, he knows they are valid concerns but they are concerns that will be addressed down the road. He stated to back up to the "C-4" and the "C-1" as he initially said that a "C-1" will accommodate the potential buyer so if it is "C-4" or nothing or "C-1" with a possibility of something working out he thinks "C-1" is definitely agreeable. He said they do have a buyer, he isn't a made up myth. He said his name is Rajah Asim; he owns a couple of fast track convenience stores right now and would like to have another one here. He added Fast Track is the brand, probably similar to a Huck's or a Thornton's or something along those lines. He stated for the zoning itself, the whole issue that came up when you read the ordinances and look at the exact wording of what you can and cannot do. He stated we are trying to make sure that whoever is coming in to get the property has the opportunity to do whatever else typically does whether it is written in there or



not. He said if outdoor storage with firewood, ice, mulch, and so forth on it is considered a convenience store activity and it does not constitute that next level of what is required from a zoning standpoint they are fine with that. He said they realize that most, even the one across the street is zoned "C-1" and it clearly has those outdoor features that a convenience store has. He stated when you read through exactly what you can and cannot do they were just trying to make sure those interests were protected from the stand point of the outdoor storage for the convenience store. He said he hates the fact that the Hobgoods are not here to see through what has happened. He said he doesn't know if that is a fair opportunity from their standpoint if they are talking about coming back in a month at "C-1" if we can revise the application and come back and ask for the "C-1" if everyone is in agreement that a "C-1" you can do all of those opportunities are there they are agreeable to the "C-1". He said he is not opposed to coming back. He said whenever you go through full blown design and take the time to go out and do everything to the T where it is ready for construction a lot of time and money is invested to get to that point and then still not get your zoning. He said they would be willing to get the site plan further along, sit down with Anthony and the Hobgoods, and any other neighbors to show them what they are coming up with as far as a buffer. He said to make sure that a "C-1" is acceptable, that the buffer was acceptable and if there were a way to meet in the middle then they definitely would do it. He added or come back next month to express to you that we have discussed it and we are on opposite sides of the fence or whatever it may be. He said to at least have the opportunity to come back and do that and get some of this before then. He said some of the technical issues from acceleration/deceleration and all of those things; those are things that will come into play when it goes through site review itself.

Attorney Doll asked are you asking the Board, the Commission, under 3.8 on behalf of the property owners now to continue the application until the July meeting of the Area Planning Commission so that you can flush out additional facts, meet, and talk with the remonstrators about this project.

Scott Buedel asked we would have the opportunity to modify the application during that time...

Attorney Doll stated an applicant as long as you are down zoning not up zoning has the opportunity to ask the Board to amend the application at any point in time during the hearing. He said as you sit here right now you could say that you would like to ask the Board to allow you to amend your application pursuant to 4.4 subsection B to request a rezone to a "C-1". He stated he is not sure that answers all of the remonstrator's questions about acceleration/deceleration lanes and all of these other things. He said he heard Scott say if that means continuing this for a month to work these other issues out then so be it so that precipitated his question. He said if that is what you are asking for and the Board is inclined to grant that then there is no reason to sit here for another hour and talk about it. He stated let us continue it and you get with the neighbors who are here that want to talk to you about this project then we will see you in July. He said his recommendation is that you do not amend your petition; you leave it as it is, you talk and you come back in if you reach an agreement with the remonstrators with what he calls a complete package. He said here is everything we want it, as a "C-1" here is the traffic flow we envisioned being, here is the light protection, here is the noise protection, here is the buffer zones, here everything is in one total presentation. He said so the Board can comprehend what it

is everybody has talked about and agreed to. He stated if there is still objections then there are still objections. He added he is going to repeat his question are you asking that the application be continued until July to see if you can resolve remonstrations concerns about it. He stated you don't have to be just trying to understand what you are saying.

Scott Buedel we definitely want to sit down with the neighbors and go through this but if we keep our request, the same as it is right now and then come back next month with everything that we are proposing is a "C-1" then he thinks they are going to start over again. He said they have heard the request and the issues...

Attorney Doll stated wait a minute. He said if we proceed with the application the way, it is on the petition to rezone the Area Plan Commission's vote is a recommendation to the County Commissioners for a modification of the County's zoning map. He said it will either be we recommend you to approve it, we recommend you do not approve it that you deny it, or it will go to the Commissioners if there isn't a unanimous vote because there are only four members present it will go without a recommendation. He stated one way or the other if we get to a consideration of your petition on its merits something is going to the Commissioner's in July. He stated this doesn't give us jurisdiction to come back in a month to sit down and say hey, there is a possibility to reconsider it, frankly in ten years we have never done it. He said there is a rule allowing us to reconsider the action taken to deny a petition to rezone under subsection 4.6 of the rules. He stated other than that we lose jurisdiction in a month to help anybody fix anything. He added his question again is do you want to vote tonight as is or are you asking to continue it for further discussions among all of the parties and come back in July.

Scott Buedel is discussing this with his clients.

Attorney Doll said Scott there is a six-month prohibition about refiling another petition if it is denied.

Anthony Long stated why don't you just represent them Morrie.

Attorney Doll replied no, he wants everybody to understand ...

Anthony Long stated that is what they pay us for.

Attorney Doll said your client needs to be aware of that if it is put up for a vote and it is denied the rules say the Board cannot reconsider it for six months.

Scott Buedel stated what he feels would be best, in lieu of what has happened tonight especially.

Attorney Doll asked what does your client want done with the petition.

Scott Buedel stated they would like to amend the petition and come back before the Board in a month with a "C-1" recommendation. He said with us petitioning for a "C-1" zoning and have a

little more information to present to you and have the remonstrators have a chance to come up with some additional information too and hopefully have a...

Attorney Doll asked is the applicant asking to amend the petition tonight from a "C-4" to a "C-1". He asked or are you asking to continue the petition as is for you to meet and talk with the remonstrators and come back in July at which point in time maybe you are going to amend the petition maybe you're not, maybe you are going to address the issues that Anthony has raised, maybe you're not. He stated he wants to be clear are you wanting to amend it now or are you wanting to continue it until July when all activity will occur then after you have met with the remonstrators. He asked if he sees the difference.

Scott Buedel replied yes, he sees the difference.

Attorney Doll asked ok so what is your request.

Scott Buedel replied he thinks they should come back before the Board.

Attorney Doll asked you are asking that it be continued in its present form until July.

Scott Buedel replied they would come back with a "C-1".

Attorney Doll replied what you do in July is up to you and your negotiations with the remonstrators. He said you are missing his question. He stated he just wants to know what you are asking the Board for tonight. He said are you wanting it continued as it is and you have latitude to deal with the remonstrators and talk with them to all matters. He added it would be rescheduled for July. He added or are you asking the Board now to amend it from a "C-4" to a "C-1" and then to continue the "C-1" until July. He stated he did not know how to say it any clearer than that.

Scott Buedel replied we would like you to amend the request to a "C-1" and continue it until July.

Attorney Doll said Board.

Vice-President Willis asked Attorney Doll do we take a vote on each one separately...

Attorney Doll replied the question is whether there is a motion to amend before the Board and it has been seconded and approved. He said then the next motion will be a motion to continue, Anthony if he wants to speak to either motion he can do that. He stated the question gets to be first is a motion to amend, is there a motion to amend it in response to the request of the applicant.

Attorney Doll stated he does not hear a motion. He said Scott there is not a motion to amend your application, do you still want to continue it until July or vote tonight.

Scott Buedel asked it would be a “C-4” zone...

Attorney Doll replied that is what the vote would be on.

Vice-President then you could change it at that point.

Attorney Doll replied no, there is a six-month wait if it is denied.

Bob Johnson stated if we continue it.

Attorney Doll replied this is a recommendation this is not black letter law. He said we are going to make a recommendation to this Commissioner and two others about what they do. He said could they completely disagree with our recommendation, yes. He said could they follow our recommendation, yes. He stated if there is something in between those two things, they could even do that. He said this is not a plat approval, as you know Scott this is a rezone recommendation. He stated this is a public hearing about amending the County Zoning Map. He said that is what they are talking about. He added for the benefit of Anthony’s friends tonight, not all of them are clients apparently, but friends tonight we are just a recommendation body tonight on this one. He added the Commissioners in a month get to make the final decision. He stated we could not amend it the question is do you want to vote tonight or do you want it continued for our recommendation power.

Scott Buedel tells his clients if we get a vote tonight it is going to go onto the Commissioners ...

Attorney Doll stated either way.

Scott Buedel said but you are voting on “C-4” tonight.

Amanda Mosiman said unless you continue it.

Attorney Doll stated it is the old adage be careful what you ask for.

Scott Buedel asked but we can amend what we are doing.

Attorney Doll stated if you continue it, another motion could be made to amend it in July. He added if we vote on it goes to the Commissioners they rezoned.

Scott Buedel said he thought he heard what Attorney Doll was saying and how he presented this but... so we are either voting right now as a “C-4” and it is going to move forward and go to the Commissioners as a “C-4”.

Attorney Doll replied yes, or you could ask us to continue it. He stated you asked us to amend it and that failed. He said we didn’t vote on a motion to continue.

Scott Buedel asked we could ask for a motion to continue and come back before you next month.

Attorney Doll replied yes, if you reach an agreement with all of the remonstrators and neighbors in the neighborhood next month you could ask us once again to amend your application to a "C-1" if that is part of the deal that you reach with all of the surrounding neighbors. He stated he is not trying to put a thumb on this program.

Scott Buedel replied he thought that is what he had asked for the first time.

Attorney Doll replied you asked us to amend it tonight, now. He said the difference that he is suggesting to you is that failed. He said he thinks you asked for the remedies in the wrong order but that is just your right. He said if you want you can ask for it to be continued and once again try to amend it in July if you wish. He stated that is up to you, if you want us to vote we will vote tonight. He said he has no idea how they are going to vote but we will vote tonight.

Scott Buedel stated he thought he said this first but he would like to come back before you.

Attorney Doll said you want it continued.

Scott Buedel replied he wants it continued.

Attorney Doll said there is the question for the Board. He said Jeff is there a motion on a continuance.

Amanda Mosiman said she had done it once and she would do it again. She said she makes a motion that they postpone PC-R-18-10 to the July meeting. Bob Johnson seconded the motion and carried unanimously.

Attorney Doll stated in the meanwhile you would get with Anthony and others. He said he doesn't know how to tell you to do this.

Anthony Long stated for Scott to call the office and they would co-ordinate it.

Attorney Doll stated he wished we had done this two hours ago.

Amanda Mosiman stated she tried.

Anthony Long stated he has dealt with Scott before and likes him.

Attorney Doll stated we like both of them. He said contrary to popular belief we like both of you.

Anthony Long stated that is why he asked for a continuance folks but he loved to spend a couple hours with you it has been a long time.

Attorney Doll stated we have a few hours we could go yet Anthony if you want to.

Anthony Long replied you have worn him down.

Amanda Mosiman asked Anthony to give their best wishes to his client.

**OTHER BUSINESS:**

Attorney Doll stated we continued the Enclave Plat approval so there is nothing to report.

Mrs. Barnhill stated that Mrs. Rector is working on a budget for next year. She said she believes it is due in July. She said she is going to have to email it the Board to review before she turns it in.

Bill Byers asked if we had a report on Mrs. Rector.

Mrs. Barnhill stated she is home in a lot of pain and bored to death. She said she is ready to come back but the doctors are not going to let her for a little bit.

Amanda Mosiman asked when we would be moving forward on the position opening in the office.

Attorney Doll stated Sheila has retired.

Mrs. Barnhill replied we have someone coming in August to fill the position.

**ATTORNEY BUSINESS:** None

**EXECUTIVE DIRECTOR BUSINESS:** None

Bill Byers made a motion to adjourn. Bob Johnson seconded the motion and the meeting adjourned at 8:21 p.m.

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Jeff Willis, Vice-President

ATTEST:

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Molly Barnhill, Assistant Director